

determination used as a basis for the decision.

Designated conservationist means the NRCS official, usually the district conservationist, whom the State Conservationist designates to be responsible for the program or compliance requirement to which this part is applicable.

Mediation means a process in which a neutral third party, the mediator, meets with the disputing parties (e.g., the landowner or program participant and the agency), facilitates discussions, and works with the parties to resolve their disputes, narrow areas of disagreement, and improve communications and relationships. A mediator has no authority to render a decision or determination.

Preliminary technical determination means the initial written technical determination provided to a client which will become final after 30 days unless the client takes action in accordance with § 614.101 to stay the preliminary technical determination from becoming final.

State Conservationist means the NRCS official in charge of NRCS operations within a State, as set forth in part 600 of this chapter.

Technical determination means a conclusion concerning the status and condition of the natural resources and cultural practices based on science and best professional judgment of natural resource professionals concerning the soils, water, air, plants, and animals.

Refer to 7 CFR 11.1 for other definitions applicable to appeals of adverse technical determinations and decisions covered by this part.

§ 614.3 Applicability.

(a) Appeals of adverse technical determinations and adverse decisions covered by this part are also governed by National Appeals Division (NAD) regulations at 7 CFR part 11.

(b) Decisions which are subject to this part include any decision under one or more NRCS programs; and technical determinations or decisions that affect the status of the land even though they may not affect the landowner's or program participant's eligibility for USDA program benefits.

(c) The failure of an official of NRCS to issue a technical determination or decision is subject to this part.

(d) Complaints involving discrimination in program delivery will be handled under the existing USDA civil rights rules and regulations.

(e) Appeals on contractual issues that are subject to the jurisdiction of the Agriculture Board of Contract Appeals are not appealable under the procedures within this part.

§ 614.4 Reservation of authority.

Nothing contained in the regulations of this part shall preclude the Secretary of Agriculture or the Chief from determining at any time any question arising under the programs to which the regulations of this part apply, or from reversing or modifying in writing, with sufficient reason given therefore, any technical determination or decision made by an NRCS official.

§ 614.5 Decisions not subject to appeal.

The following are examples of decisions which are not appealable:

- (a) General program requirements that apply to all participants;
- (b) Science-based formulas and criteria;
- (c) Procedural decisions relating to administration of the programs; and
- (d) Denials of assistance due to lack of funds or authority.

Subpart B—Appeals of Technical Determinations Related to the Conservation Title (Title XII) of the Food Security Act of 1985, as Amended

§ 614.100 Applicability.

The provisions of this subpart set forth the procedures under which a landowner or program participant may seek mediation of a preliminary technical determination or appeal from technical determinations made by NRCS officials on or after January 16, 1996 regarding technical determinations within the following programs:

- (1) Highly Erodible Land Conservation;
- (2) Wetland Conservation, including wetland technical determinations

§ 614.101

7 CFR Ch. VI (1–1–05 Edition)

made by NRCS officials not related to a request for USDA program benefits;

- (3) Conservation Reserve Program;
- (4) Wetlands Reserve Program;
- (5) Agricultural Water Quality Incentives Program; and
- (6) Environmental Easement Program.

§ 614.101 Notice of preliminary technical determinations.

(a) All preliminary technical determinations related to programs provided for in § 614.100 shall be in writing and shall inform the landowner or program participant of the following:

(1) The preliminary technical determination will become final after 30 days if the landowner or program participant does not arrange with the designated conservationist for either or both of the following options:

(i) A field visit to the site to gather additional information and to discuss the facts concerning the preliminary technical determination, together with, at the option of the conservation district, a district representative; and

(ii) Mediation.

(2) Once the technical determination is final, the landowner or program participant may appeal the technical determination to the FSA county or area committee pursuant to 7 CFR part 780. Landowners or program participants wishing to appeal must exhaust any available appeal procedures through the FSA county committee prior to appealing to NAD. Judicial review is available only as specified in 7 CFR part 11.

(b) The document containing the preliminary technical determination shall be mailed or hand delivered to the landowner or program participant.

§ 614.102 Mediation of preliminary technical determinations.

(a)(1) Any dispute with respect to a preliminary technical determination related to the programs provided in § 614.100 shall, at the request of the landowner or program participant, be mediated:

(i) Through certified individuals in those States where a State mediation program certified by the United States Department of Agriculture (USDA) has been established. Conservation district

officials in certified State Mediation Program States may become certified by the State and utilized for mediation, if they choose to participate.

(ii) In States with no certified mediation program in effect, through mediation by a qualified representative of a local conservation district, if a local conservation district chooses to participate. Upon mutual agreement of the parties, other individuals may serve as mediators.

(2) Upon receiving a request for mediation, NRCS shall notify other USDA and Federal agencies, as appropriate.

(b) The parties shall have not more than 30 days to reach an agreement following a mediation session. The mediator shall notify the designated conservationist in writing at the end of this period whether the parties reached an agreement. Any agreement reached during, or as a result of, the mediation process shall conform to the statutory, regulatory, and manual provisions governing the program.

§ 614.103 Final determinations.

(a) Preliminary technical determinations shall become final:

(1) 30 days after receipt by the landowner or program participant of the notice of a preliminary technical determination issued pursuant to § 614.101, unless a field visit or mediation is requested;

(2) After the earlier of 30 days after the field visit provided for under § 614.101(a) or receipt by the landowner or program participant of a final determination from the designated conservationist; or

(3) 30 days after a mediation session if a mutual agreement has not been reached by the parties.

(b) The final technical determination shall set forth the decision, the basis for the decision, including all factors, technical criteria, and facts relied upon in making the decision, and shall inform the landowner or program participant of the procedure for requesting and pursuing further review.

§ 614.104 Appeals of technical determinations.

(a) Technical determinations related to the programs in § 614.100 may only be appealed, pursuant to the provisions of